

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S BRIEF
AND
APPENDIX**

77-2048

To be submitted

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 77-2048

HAROLD EDWARDS,
Petitioner-Appellant,

—v.—

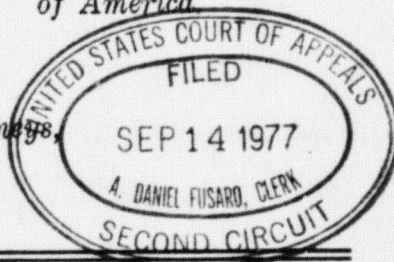
UNITED STATES OF AMERICA,
Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR THE UNITED STATES OF AMERICA

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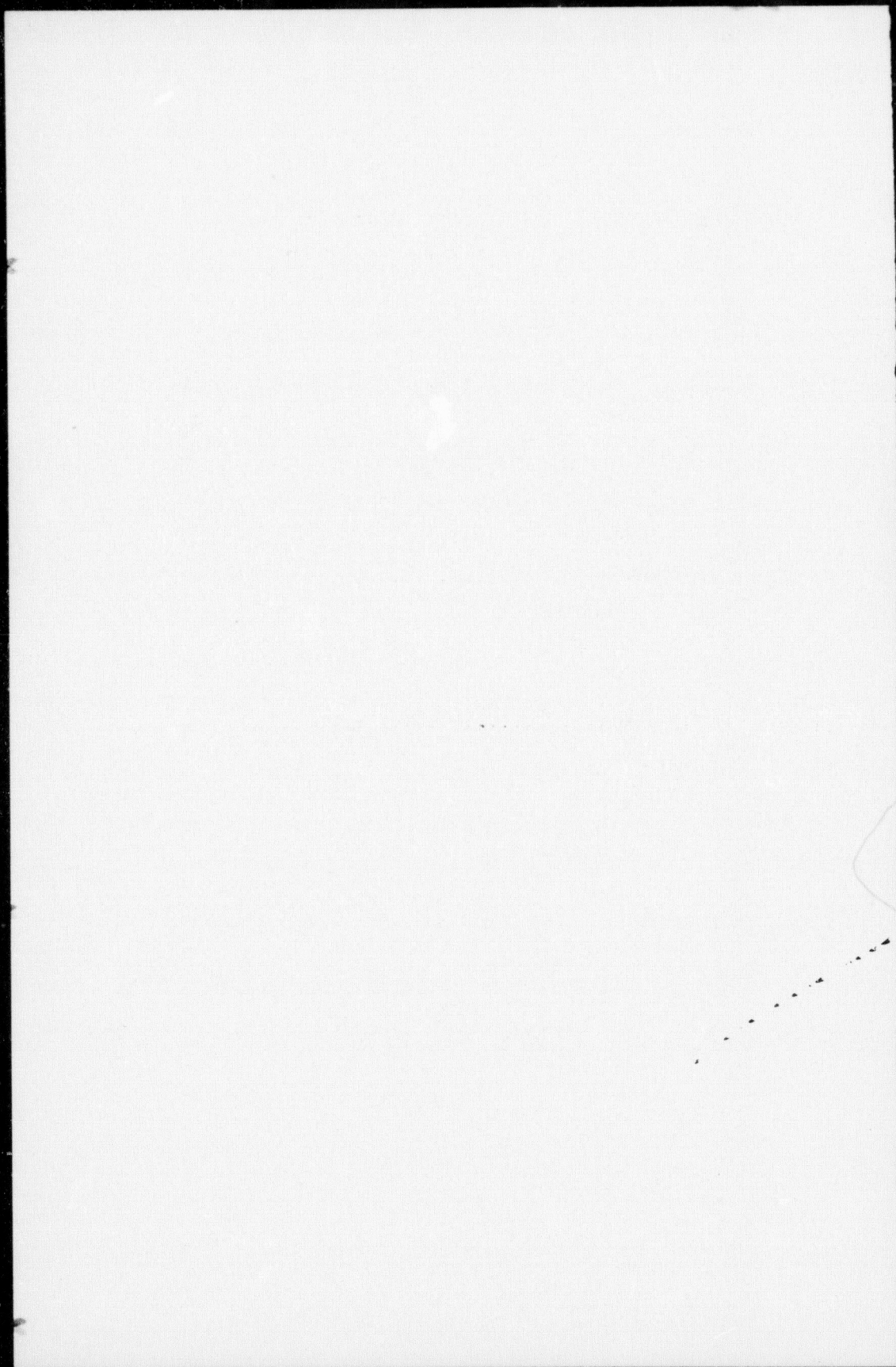
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**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 77-2048

HAROLD EDWARDS,
Petitioner-Appellant,

—v.—

UNITED STATES OF AMERICA,
Respondent-Appellee.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Harold Edwards appeals from a memorandum and order filed January 25, 1977, in the United States District Court for the Southern District of New York by the Honorable Charles M. Metzner, United States District Judge, denying Edwards' motion pursuant to Title 28, United States Code, Section 2255, seeking withdrawal of his plea of guilty, vacation of the judgment of conviction entered thereon, and dismissal of the indictment upon which his plea was premised.

Indictment 74 Cr. 592, filed on June 11, 1974, charged Harold Edwards, along with two others, with armed robbery of a bank insured by the Federal Savings and Loan Insurance Corporation. Count One charged all three defendants with bank robbery in violation of Title 18, United States Code, Sections 2113(a) and 2. Count

Two charged them with use of a firearm in connection with the robbery, in violation of Title 18, United States Code, Sections 2113(d) and 2.

On January 8, 1975, Edwards pleaded guilty to Count One of the indictment; on February 20, 1975, he was sentenced to a term of 10 years imprisonment. No appeal was taken from that conviction.

In September 1976, Edwards filed the present motion pursuant to 28 U.S.C. § 2255, making, for the first time, a claim under the Interstate Agreement on Detainers (hereinafter "the Agreement"), 18 U.S.C. App. Judge Metzner denied the motion on January 25, 1977.

Statement of Facts

On June 11, 1974, Edwards and two confederates were indicted for the May 30, 1974, armed robbery of the New York Federal Savings and Loan Association, 1270 Lexington Avenue, New York, New York. At that time a warrant was issued for his arrest. On June 27, 1974, that warrant was lodged as a detainer at the Manhattan House of Detention ("Riker's Island") where Edwards was confined at the time, awaiting trial on state charges.

On December 18, 1974, Edwards was produced in federal court pursuant to a writ of *habeas corpus ad prosequendum* ("writ") at which time an application to vacate the warrant was granted. He was returned to Riker's Island that day.* The writ was adjourned to

* The motion filed in the District Court as well as Edwards' brief in this Court both incorrectly list this date as December 15, 1974, which was a Sunday. Both the docket sheet in the District Court and the writ itself indicate that Edwards was first brought to federal court on December 18, 1974. The docket sheet is included in the Government's appendix.

January 8, 1975 on which date Edwards was again brought before the District Court and pleaded guilty to Count One of the indictment. The writ was then adjourned to February 20, 1975, and Edwards was returned to Riker's Island. On that latter date, the defendant was once again brought to federal court and was sentenced to 10 years imprisonment.* The thereupon marked satisfied.

Nineteen months later, in September 1976, Edwards filed the present motion pursuant to 28 U.S.C. § 2255, seeking to set aside and vacate his sentence, to withdraw his guilty plea and to dismiss the indictment against him. The motion was based entirely on the Agreement. Edwards argued that under this Court's decision in *United States v. Mauro*, 544 F.2d 588 (2d Cir. 1976), *petition for cert. filed*, 45 U.S.L.W. 3765 (May 9, 1977), his transfer from state to federal custody and back again prior to his federal guilty plea violated Article IV(e) of the Agreement. On January 25, 1977, Judge Metzner denied the motion without a hearing.** Judge Metzner ruled that since Edwards had pleaded guilty to the indictment, he had waived all defects in the indictment, including any possible vulnerability to challenge under the Agreement.

* The federal sentence was to run concurrently with a sentence imposed in state court on February 13, 1975, (that is, between the time of Edwards' guilty plea and the time of his sentence in this case) of two to four years for possession of a weapon.

** A copy of his memorandum opinion is attached to Edwards' brief on this appeal.

ARGUMENT

POINT I

The Decision of the Court in *United States v. Mauro*, 544 F.2d 588 (2d Cir. 1976), Was Incorrect.

In *United States v. Mauro*, 544 F.2d 588 (2d Cir. 1976), *petition for cert. filed*, 45 U.S.L.W. 3765 (May 9, 1977), which the majority noted was a case "of first impression," *id.* at 589, a divided panel of this Court ruled for the first time in any Court of Appeals that, in effect, when the Government utilized the literally centuries-old writ of *habeas corpus ad prosequendum* to produce defendants in Court, it was bound by the provisions of Article IV of the Agreement, notwithstanding the fact that neither the Agreement nor its legislative history even once mentions the writ or provides for a repealer of 28 U.S.C. § 2241(c)(5). The Government submits that the decision in *Mauro* was wrong.* The arguments

* Were this Court to overrule *Mauro*, Edwards' motion would necessarily be without merit. We recognize, of course, that this case is distinguishable from *Mauro* in one respect. In *Mauro*, no detainer was filed against the defendants. The *Mauro* majority purported to rule only that a writ is a "detainer," and did not explicitly reach the issue of whether a writ is a "request" within then meaning of Article IV. In this case, as in *United States v. Ford*, 550 F.2d 732 (2d Cir. 1977), *petition for cert. filed*, 46 U.S.L.W. (July 8, 1977), a detainer was filed. Thus, based upon the language in *Ford* that "[w]hether the writ independently constitutes a detainer, therefore, is not at issue here," *id.* at 736, see also *id.* at 742, one might argue that this case is governed by *Ford* irrespective of the validity of *Mauro*.

This argument is incorrect, however, for the following reason. The characterization of a writ as a "detainer" is not a sufficient condition for the applicability of Article IV of the Agreement. Unlike Article III, which governs requests initiated by the defend-

[Footnote continued on following page]

in support of our position are generally those advanced by Judge Mansfield in his dissent in *Mauro*, 544 F.2d at 595, and we will not repeat them here. We do point out, however, that since the decision in *Mauro*, the Courts of Appeal for the First, Fifth and Sixth Circuits have considered the issue reached in *Mauro* and have each rejected the reasoning adopted in that decision. See *Ridge-way v. United States*, Dkt. No. 76-2145 (6th Cir. July 13, 1977); *United States v. Kenaan*, Dkt. No. 77-1014 (1st Cir. July 7, 1977); *United States v. Scallion*, 548 F.2d 1168 (5th Cir. 1977).^{*} In short, this Court now stands absolutely alone in its interpretation of the Agreement. In view of the enormous precedential and practical significance of *Mauro* and its progeny, we respectfully urge the panel that hears this appeal to reconsider the correctness of the *Mauro* decision. See, e.g., *United States v. Alessi*, 544 F.2d 1139, 1143-52 (2d Cir. 1976 (reconsidering *United States v. Beckerman*, 516 F.2d 905 (2d

ant and is triggered solely by the pendency of a "detainer," Article IV is triggered by a "request for temporary custody or availability," which is filed by the Government. In order to reach its result that dismissal was required by Article IV(e), the majority in *Mauro* must necessarily but *sub silentio* have decided that a writ constitutes a "request;" indeed, the *Ford* panel recognized this when it read the *Mauro* decision as holding "that the writ of habeas corpus ad prosequendum constitutes a 'detainer' and a 'request' by a prosecuting authority within the meaning of the Act..." 550 F.2d at 736. (emphasis added).

Hence, if *Mauro* was wrongly decided, Article IV does not apply to Edwards; otherwise put, Edwards' position depends upon the continued vitality of *Mauro*.

^{*} Each of these decisions rejected *Mauro* and held that a writ is not a detainer under the Agreement. The Third Circuit, in *United States v. Sorrell*, Dkt. No. 76-1647 (3d Cir. November 29, 1976), reached the same result reached by this Court in *Mauro*. However, that decision was vacated on January 27, 1977, and was argued before the Third Circuit *en banc* on May 2, 1977. The issue is currently also before the Ninth Circuit in *United States v. Adkins*, Dkt. No. 76-3526 and the Eighth Circuit in *Speed v. United States*, Dkt. No. 77-1126.

Cir. 1975)). Alternatively, we urge this Court to consider *en banc* the correctness of *Mauro* and its progeny. Unlike the situation in *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005, 1020 (2d Cir. 1973) (Kaufman, C.J.) (denying rehearing *en banc*), *aff'd*, 417 U.S. 156 (1974), were this Circuit to overrule *Mauro* and bring itself into line with the other Circuits that have ruled on the question, there is no reason to be "confident the Supreme Court will take this matter under its certiorari jurisdiction." *Id.* at 1020. Rather, were this Court to reach unanimity among the Circuits, the principal ground for a grant of certiorari, see Rule 19(1)(b) Supreme Court Rules, would no longer exist, and the Supreme Court need not hear the issue. We submit that the "exercise of sound, prudent and resourceful judicial administration," *id.* at 1021, commends this action.

POINT II

This Court's Decision in *United States v. Mauro* Should Not Be Applied Retroactively.

This Court in *United States v. Mauro*, *supra*, ruled for the first time in any court of appeals that the Agreement limited the Government's ability to procure state prisoners under a writ of *habeas corpus ad prosequendum*. Subsequently, in two decisions in which the Government's briefs were filed before the filing of the *Mauro* decision, the Court has reaffirmed its holding in *Mauro*. *United States v. Cyphers*, Dkt. No. 76-1131, slip op. 1737 (2d Cir., Feb. 8, 1977); *United States v. Ford*, *supra*, 550 F.2d at 736.* This Court has not, however, had occasion to address the fundamental issue of whether its

* The issue of the retroactive effect of *Mauro* was raised in *United States v. Cumberbatch*, Dkt. No. 77-1070 (2d Cir., argued June 9, 1977), which is presently *sub judice*.

novel interpretation of the Agreement should be applied to transfers that antedated *Mauro* and that occurred at a time when literally no one ever considered that the Government's centuries-old power to proceed by a writ was somehow limited.

In numerous decisions concerning the possible retroactivity of its prior decisions, the Supreme Court has routinely granted full retroactive effect only in two situations: where the new decision relates to an "aspect of the criminal trial that substantially impairs its truth-finding function," *United States v. Peltier*, 422 U.S. 531, 535 (1975),* and where the conduct that is the subject of the indictment was found under the prior decision to be "constitutionally immune from punishment." ** In other situations, the Supreme Court has adopted a three-pronged test based upon (1) the purpose to be served by the new decision; (2) the extent of reliance upon the previous law by the Government; and (3) "the effect on the administration of justice of a retroactive application of the new decision." *Halliday v. United States*, 394 U.S. 831, 832 (1969); *Desist v. United States*, 394 U.S. 244, 249 (1969); *Stovall v. Denno*, 388 U.S. 293, 297 (1967). Each

* See, e.g., *Hankerson v. North Carolina*, 45 U.S.L.W. 4717 (U.S. June 17, 1977) (*Mullaney v. Wilbur*, 421 U.S. 684 (1975) applied retroactively); *Ivan v. New York*, 407 U.S. 203 (1972) (*In re Winship*, 397 U.S. 358 (1970) applied retroactively); *McConnell v. Rhay*, 393 U.S. 2 (1968) (giving retroactive effect to the right to counsel provided in *Mempa v. Rhay*, 389 U.S. 128 (1967)); *Pickelsimer v. Wainwright*, 375 U.S. 2 (1963) (retroactive effect of *Gideon v. Wainwright*, 372 U.S. 335 (1963)).

** See, e.g., *Robinson v. Neil*, 409 U.S. 505 (1973) (giving retroactive effect to *Waller v. Florida*, 397 U.S. 387 (1970)); *United States v. U.S. Coin & Currency*, 401 U.S. 715 (1971) (*Marchetti v. United States*, 390 U.S. 39 (1968), and *Grosso v. United States*, 390 U.S. 62 (1968), applied retroactively). See also *United States v. Travers*, 514 F.2d 1171 (2d Cir. 1974).

of these factors clearly demonstrates that *Mauro* should not be applied retroactively.*

* Most of the decisions cited in support of the three-pronged approach involved the possible retroactive application of new constitutional procedural decisions, and indeed the doctrine of prospectivity received its genesis—or at least its impetus—from the Supreme Court's early decisions involving the exclusionary rule. See e.g., *Linkletter v. Walker*, 381 U.S. 618, 629 (1965); *Johnson v. New Jersey*, 384 U.S. 719 (1966). Nonetheless, the retroactivity analysis of those cases is fully applicable to *Mauro*. First, the decision in *Mauro* was not simply an interpretation of the Agreement, since even if the Agreement were read to apply to the federal Government, that would not in itself deal with the problem of the Government's independent power acting under a writ. The conclusion of the *Mauro* majority limiting the Government's age-old power under a writ was based on its reasoning that "[a]ny other construction would permit the United States to evade and circumvent the Agreement." 544 F.2d at 592. This, of course, was essentially a prophylactic determination of precisely the sort to which the retroactivity analysis most directly applies, *Michigan v. Payne*, 412 U.S. 47, 53 (1973). At any rate, the applicability of this analysis to interpretation of statutes, even when the predicate decision did not "overrule" a prior judicial determination, was made explicitly clear by this Court's unanimous, *en banc* decision in *United States v. Kaylor*, 491 F.2d 1133, 1138-39 (2d Cir. 1974) (*en banc*), applying its interpretation of the Youth Corrections Act prospectively only, and specifically employing the *Desist* and *Stovall* tests. Similarly, in *Bailey v. Holley*, 530 F.2d 169, 172-74 (7th Cir. 1976), a defendant sought to take advantage of the Circuit's earlier decision in *King v. United States*, 492 F.2d 1337 (7th Cir. 1974), that section 555(e) of the Administrative Procedure Act applied to the United States Board of Parole. Acknowledging that Bailey was in precisely the same situation as King, the Court nonetheless ruled that the *King* decision would be prospectively applied only. In doing so the Court specifically rejected "petitioner's contention that the *Stovall* criteria for deciding questions of retroactivity are not applicable to decisions based on statutory construction." *Id.* at 173. See also *Mower v. Britton*, 504 F.2d 396, 399 (10th Cir. 1974). Other circuits have ruled similarly. See, e.g., *United States v. Brackett*, — F.2d —, 21 Crim. L. Rep. 2391 (D.C. Cir. July 18, 1977) (*en banc*); *Owens v. United States*, 383 F. Supp.

[Footnote continued on following page]

Turning first to the purpose to be served by the new decision, the purposes of the Agreement as set forth in Article I are to avoid "uncertainties which obstruct programs of prisoner treatment and rehabilitation," and to promote "the expeditious and orderly disposition" of outstanding charges and "cooperative procedures" in dealing with interjurisdictional transfer of prisoners. None of these policies, which at any rate have nothing to do with the "truth-finding process," *Gosa v. Mayden*, 413 U.S. 665 (1973) (plurality opinion), would be furthered by retroactive application. Edwards' "programs of prisoner treatment and rehabilitation" (if indeed he was participating in any during his pre-trial confinement at Riker's Island) were in no way hampered by his very brief visit to the federal courthouse. "Cooperative procedures" were certainly unnecessary in view of the acknowledged acquiescence of the New York state authorities in the authority of the federal writ and the efficient transfer of custody which permitted Edwards to be transferred from state to federal custody for a court appearance and returned to

780, 785-87 (M.D. Pa. 1974), *aff'd*, 515 F.2d 507 (3rd Cir. 1975), *cert. denied*, 423 U.S. 996 (1976); and *Jackson v. United States*, 510 F.2d 1335 (10th Cir. 1975) (Supreme Court's interpretation of Youth Corrections Act in *Dorszynski v. United States*, 418 U.S. 424 (1974), to be applied prospectively only); *Krilich v. United States*, 502 F.2d 680, 683 (7th Cir. 1974), *cert. denied*, 420 U.S. 992 (1975) (Prior decision holding that Special Agent's Report on tax prosecution was a "statement" under the Jencks Act to be applied prospectively only). Indeed, the Supreme Court itself has afforded prospective applicability to its prior interpretation of written law. In *McCarthy v. United States*, 394 U.S. 459 (1969), the Court held that in the absence of strict compliance with Rule 11 of the Federal Rules of Criminal Procedure a guilty plea must be vacated. Although, as a concurring justice noted, the decision "merely interpreted Rule 11 . . . and held that the rule must be strictly applied according to its terms," *Halliday v. United States*, *supra*, 394 U.S. at 834 (Harlan, J., concurring, the Court held that it would be applied prospectively only, *id.* at 832-33, explicitly following the three-pronged test of *Desist* and *Stovall*.

state custody—all within a few hours. And Edwards' interest in an "expeditious and orderly" processing of his charges was surely satisfied by the unusually expeditious manner in which his particular case was handled, and in general was more than adequately protected by the Sixth Amendment and the local speedy trial rules *.

The second prong of the retroactivity test is the reliance of law enforcement authorities on prior law. It is simply incontestable that every party to Edwards' transfer from Riker's Island to Foley Square considered that the Federal Government was validly proceeding on the strength of a writ of *habeas corpus* with none of the limitations added by the Agreement. The Federal Government did not make a "request" required by the Agreement or follow any of the procedures required by the Agreement.** Indeed, our surprise at the contentions eventually adopted in *Mauro* has been self-evident. Edwards, unlike the defendants in *Mauro*, who raised the issue *promptly* and *pretrial*, never asserted any claim under, or made any mention of, the Agreement until the filing of his petition under 28 U.S.C. § 2255. In short, he simply seeks to reap a "windfall benefit," *Michigan v.*

* The Supreme Court has noted that in determining possible retroactive effect, it will also look to whether "other safeguards are available" to protect the right asserted. *Johnson v. New Jersey, supra*, 384 U.S. at 728.

** For example, the parties to the Agreement have developed common forms that are required for the processing of claims under the Agreement. These standardized documents, consecutively numbered Form I through Form IX, cover all aspects of the procedures under the Agreement, from "Notice of Untried Indictment" to be sent to a prisoner (Form I) through "Prosecutor's Report on Disposition of Charges" (Form IX). During the course of Edwards' proceedings, no one ever used such a form. While we do not contend that the use of such forms is a prerequisite to assertion of rights under the Agreement, but see Article VII, their non-use, we submit, is powerful evidence that no one at that time considered that the Agreement applied.

Payne, 412 U.S. 47, 53 (1973), from a retroactive application of *Mauro*. Finally, the state of New York, even if one were to assume that it had an interest in the disposition of Edwards' petition, clearly did not consider the Federal Government limited by the Agreement, since it never once required compliance with the procedures contemplated by the Agreement.* In short, *all* parties to this matter treated the manner in which Edwards was brought to the federal courthouse as nothing more nor less than the Federal Government's exercise of its power under Title 28, United States Code, Section 2241 (c) (5). Furthermore, we submit that this reliance was entirely justified. The *Mauro* court noted that its decision that the Agreement applied to the Federal Government was "one of first impression in this Court." 544 F.2d at 589.** Indeed, while the majority in *Mauro* concluded that a writ constituted a "request" under the Agreement, its principal basis for doing so—the assertion that "[a]ny other construction would permit the United States to evade and circumvent the Agreement by simply utilizing the traditional writ," 544 F. 2d at 592 (footnote omitted)—ignores the fact that the defendant under Article III(a) can *himself* trigger the applicability of the Agreement. In any event, even if the *Mauro* majority's fear of circum-

* Those procedures include both the use of the forms described on page 10, *supra*, at ** and the 30-day opportunity of the Governor to review the "request" under Article IV(a).

** Thus, the *Mauro* decision should not be applied retroactively as are decisions that merely "clarify or extend" prior law. *Gates v. Henderson*, Dkt. No. 76-2065, slip op. 1345, 1349 n. 2 (2d Cir., January 12, 1977), vacated *en banc* on other grounds, slip opff 5361 (August 19, 1977); *Welcome v. Vincent*, 549 F.2d 853, 858 n. 3 (2d Cir. 1977); see also *Ferguson v. United States*, 513 F.2d 1011, 1012 (2d Cir. 1975) (Kaufman, C.J.). As the *Mauro* panel acknowledged, its decision was wholly unprecedented, and thus these decisions are inapplicable. Indeed, in *Ferguson* the Court noted that prospective application was appropriate for new decisions "which conflicted with well-established prior practice." *Id.* That is certainly the situation in this case.

vention were sound, prospective application of this essentially prophylactic reasoning in *Mauro* is clearly sufficient to cure any alleged ill. Finally, the *Mauro* majority's conclusion, whatever its merits, is not one that could possibly be foreseen by anyone other than the clairvoyant. There is simply *not one scrap* of explicit language or even a hint in either the text of the Agreement or the legislative history behind it that the power of the Federal Government acting under authority of writs was somehow limited.* No clearer case for reliance on prior law could be made.

Finally, of course, "the effect on the administration of justice of a retroactive application" of *Mauro* is clearest of all. It is incontestable that since the accession of the Federal Government to the Agreement in 1970 virtually no one—and certainly no one in this Circuit—asserted any rights under that Agreement with respect to the Federal Government until 1976. Prior to the *Mauro* decision, prisoners appear to have been transferred on a regular basis from state to federal custody and back without regard for the provisions of the Agreement. While there are no statistics, we submit that there are a significant number of prisoners in federal custody whose transfers both antedated the *Mauro* decision and violated the provisions of the Agreement. As word of the *Mauro* decision spreads, many prisoners fortunate enough to have been convicted in a court of the Second Circuit will raise a claim under the Agreement, either directly or, like

* As noted at p. 5, *supra*, the First, Fifth and Sixth Circuits, the only ones that have considered the issue, have explicitly rejected *Mauro*. Moreover, prior to this Court's decision, several judges in the Southern District of New York had also rejected the reasoning of the district court opinion in *Mauro*. See *United States v. Brown*, — F. Supp. — 76 Cr. 244 (S.D.N.Y. July 15, 1976) (Metzner, J.); *United States v. Lee*, — F. Supp. — 76 Cr. 552 (S.D.N.Y. August 16, 1976) (Goettel, J.). No judge in the Southern District had agreed with Judge Bartel's decision in *Mauro* prior to its affirmance. In short, the United States Attorney has not been alone in his reading of the statute.

Edwards, under 28 U.S.C. § 2255.* This prospect is especially frightening when, as here, convictions of defendants who have pleaded guilty to serious crimes are jeopardized—over an issue that has absolutely nothing to do with guilt or innocence.

In short, under the tests developed by the Supreme Court to determine the retroactive effect of a decision, *Mauro* should be applied—if at all—prospectively only.**

POINT III

A Violation of Article IV of the Agreement Is Not Cognizable Under 28 U.S.C. Section 2255.

It is well settled that to warrant collateral review under 28 U.S.C. § 2255, the claimed error must be one of lack of jurisdiction, deprivation of a constitutional right or a fundamental defect resulting in a "complete miscarriage of justice." *Davis v. United States*, 417 U.S. 333, 346 (1974), quoting *Hill v. United States*, 368 U.S. 424, 429 (1962); see also *Alfano v. United States*, 555

* This is at least the seventh case to reach this Court raising issues under the Agreement, all in the last year. *Mauro, Ford, United States v. Cyphers*, Dkt. No. 76-1131, slip op. 1737 (2d Cir., February 8, 1977); *United States v. Chico*, Dkt. No. 77-1016, slip op. 4275 (2d Cir., June 20, 1977); *United States v. Cumberbatch*, *supra*; and *United States v. Evans*, 555 1 2d 561 (2d Cir. 1977), *aff'g* 423 F. Supp. 528 (S.D.N.Y. 1976). See also *United States v. Guarino*, Dkt. No. 77-1127 (presently pending on submission). In addition, there may be appeals from other districts of which we are unaware, and a significant number of cases raising such issues are pending in the district courts.

** In *United States v. Kaylor*, *supra*, this entire Court noted "great concern lest our burdened federal court system be flooded with new motions to vacate sentences. . . ." 491 F.2d at 1138. That concern must surely arise here *a molto fortiori* when the concern is that the courts will be burdened with attempts by concededly guilty defendants seeking release, and not merely resentencing.

F. 2d 1128 (2d Cir. 1977); *United States v. Spada*, 331 F. 2d 995, 996 (2d Cir.), *cert. denied*, 379 U.S. 865 (1965). The facts of this case fall into none of these categories. No exceptional circumstances are presented here where "the need for [the] remedy afforded by the writ of habeas corpus is apparent." *Hill v. United States*, *supra*, 368 U.S. at 429.

The District Court in this case certainly had subject matter jurisdiction over Edwards' bank robbery indictment and it obtained personal jurisdiction over him on December 18, 1974, the day he was arraigned on the indictment and his bail was fixed.*

Since the District Court unquestionably had subject matter jurisdiction to accept the guilty plea and to render the judgment of conviction now being collaterally attached,** the inquiry becomes whether the claim raised a

* Edwards' claim that the Court somehow lost personal jurisdiction over him by returning him to Riker's Island on December 18, 1974 is frivolous. The place of his incarceration in no way changed his status. Indeed, as the Supreme Court has recently reiterated, once a defendant is actually before the Court, any illegality in the manner of his being brought there will not vitiate a conviction or deprive the Court of jurisdiction. *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975); *Frisbie v. Collins*, 342 U.S. 519 (1952); *Ker v. Illinois*, 119 U.S. 346 (1886). Moreover, any question as to personal jurisdiction was waived by Edwards guilty plea on January 8, 1975. *Bistram v. United States*, 253 F.2d 610 (8th Cir. 1958); *United States v. Rosenberg*, 195 F.2d 583 (2d Cir.), *cert. denied*, 344 U.S. 838 (1952).

** While in this case Judge Metzner concluded that Edwards had waived his claims by pleading guilty, in a separate matter, also involving invocation for the first time of rights under the Agreement by means of section 2255, Judge Metzner has concluded that a section 2255 motion will lie to claim such rights when the defendant went to trial. In particular, Judge Metzner concluded that an Article IV(e) violation created a "jurisdictional defect" in the indictment, which is thus cognizable on collateral attack under *United States v. Loschiavo*, 531 F.2d 659, 662-63 (2d Cir. 1976). *Enright v. United States*, 77 Civ. 449 (S.D.N.Y.

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July 15, 1977). Judge Metzner has agreed to reconsider his decision upon the filing of further papers by the Government, and the issuance of the writ has been stayed until September 1977.

At any rate, we submit that Judge Metzner's analysis of an Article IV violation as a "jurisdictional defect" is incorrect. The *Loschiavo* decision, upon which he relied, noted only that section 2255 will lie to entertain "claims based upon . . . a lack of jurisdiction, in the broad sense of the court's power to adjudicate the issues . . ." 531 F.2d at 662-63. Since the indictments in both *Enright* and this case concededly stated an offense "against the laws of the United States," then clearly the District Court had "power to adjudicate the issues" under 18 U.S.C. § 3231, regardless of the vulnerability of the indictment to attack. Indeed, as this Court has recently noted, characterizing attacks on indictments as "jurisdictional" will render the requirement that such attacks be made pre-trial "a nullity." *United States v. McGrath*, Dkt. No. 77-1064, slip op. 4827, 4832 n.5 (2d Cir., July 19, 1977).

This limited interpretation of the notion of "jurisdictional defect" is simply compelled by the wording of F.R. Crim. P. 12(b)(2), which provides that defenses and objections based upon defects in the indictment are waived if not made prior to trial, other than claims that "it fails to show jurisdiction in the court or to charge an offense. . . ." As commentators have noted, see Wright, *Federal Practice and Procedure*, § 193 at 404-06 (1969), this exception has been rigorously distinguished from claims that attack only the validity of the indictment. Furthermore, the decisions in *Davis* and *Loschiavo* are consistent with this position. In both cases, the offense with which the defendant was charged was no longer an offense against the laws of the United States. See also *United States v. Travers*, *supra*. Moreover, if the defect created by a violation of the Agreement were truly jurisdictional, in the broad sense of the court's power to adjudicate, then it would not be waivable. But, as noted in *United States v. Ford*, *supra*:

"This provision [Article IV(e)], however, which is intended to avoid the disruptions in a prisoner's rehabilitation occasioned by repeated transfers between jurisdictions, is thus for his benefit and is waivable." 550 F.2d at 742.

Had the defect alleged in *Ford* been truly jurisdictional, that would have ended the matter, since "the lack of jurisdiction referred to in [F.R. Crim. P. 12(b)(2)] obviously refers to jurisdiction over subject matter, which a defendant has no power to waive." *Pon v. United States*, 168 F.2d 373, 374 (1st Cir. 1948).

substantial constitutional issue. The answer, clearly, is that it did not. A violation of Article IV(e) does not involve a substantial constitutional issue, or indeed *any* constitutional issue. The right is merely a statutory one, having no constitutional derivation or nexus. Specifically, Edwards made no showing and, indeed, could have made no showing) of prejudice to or loss of any rights under the Fifth or Fourteenth Amendments. Rather, his best interests as a state prisoner were clearly and carefully safe-guarded. He was permitted to continue in whatever programs may have been conducted by the state institution, and suffered no hardship in traveling due to the close proximity of the federal courthouse. In short, his "return" to state custody did not "significantly impede the development of a coherent program for the prisoner's punishment and rehabilitation." *United States v. Ford*, 550 F. 2d at 739. Rather, it furthered that goal.*

Finally, any claim that there was a "fundamental defect which inherently results in a complete miscarriage of justice," *Davis v. United States*, *supra*, must also fail. While this Court has held collateral relief warranted as a result of an intervening change in law regarding the underlying offense, *United States v. Loschiavo*, *supra*; see also, *United States v. Travers*, *supra*; *United States v. Liguori*, 430 F.2d 842 (2d Cir. 1970), *cert. denied*,

* Edwards makes no claim that his rights under Article IV(c) of the Agreement were violated or, that he was denied a speedy trial. Indeed, his case was disposed of swiftly, well within the structures of *Barker v. Wingo*, 407 U.S. 514 (1972), the local speedy trial rules then in effect (the Government filed its Notice of Readiness for Trial on December 18, 1974, the day of Edwards' arraignment), and the 120-day period provided for in Article IV(c) of the Agreement.

402 U.S. 948 (1971), under none of these decisions, or under *Davis*, is Edwards entitled to relief.*

This Court's decision in *Mauro*, even if considered an intervening change in law, does not result in imprisoning Edwards for "something that was not a criminal offense," 531 F. 2d at 665. His conduct constitutes a federal criminal offense despite the interpretation given to the Agreement by the *Mauro* panel. Accordingly, there would be no miscarriage of justice in denying collateral relief under Section 2255. *Hill v. United States*, *supra*.

Two recent decisions of this Court demonstrate the limited availability of relief under Section 2255, as opposed to direct review. In *Del Vecchio v. United States*, Dkt. No. 76-2165, slip op. 3719 (2d Cir., May 24, 1977), this Court considered whether Section 2255 affords relief to a defendant who attacked his guilty plea because of a technical failure to comply with the provisions of Rule 11 of the Federal Rules of Criminal Procedure. The Court held that in spite of the District Court's failure to advise Del Vecchio of his ineligibility for parole in the event of conviction,—which would automatically render his plea vulnerable on direct review under *Michel v. United States*, 507 F.2d 461 (2d Cir. 1974)—his conviction would not be set aside on collateral attack. After a thorough review

* In both *Davis* and *Loschiavo*, the concern was with a change in the law subsequent to the affirmance of the respective convictions which, if available to Davis and Loschiavo, would have completely exonerated them. For example, the intervening change in law meant the Loschiavo "was being imprisoned for something that was not a federal criminal offense." 531 F.2d at 665. In *Davis*, due to the intervening change in the law it was possible, if his contention was correct, that his "conviction and punishment are for an act that the law does not make criminal." 417 U.S. at 346. These were truly situations which would inherently result "in a complete miscarriage of justice." Similarly, in *Travers*, the conduct of which Travers stood convicted no longer constituted a federal offense.

of the standard to be applied in Section 2255 cases under *Davis*, the Court concluded that to obtain relief under Section 2255 for noncompliance with Rule 11 in the making of the plea "a defendant must at least show prejudice affecting the fairness of the proceedings or the voluntariness of the plea." Slip op. at 3728.

Similarly, in *Alfano v. United States*, *supra*, the Court held that Section 2255 relief would not be granted to set aside a conviction for failure to comply with the rule enunciated in *United States v. Gigante*, 531 F.2d 502 (2d Cir. 1976), that a violation of the sealing requirements of 18 U.S.C. § 2518(8)(a) automatically requires suppression, even absent any claim of tampering. The Court, quoting *Stone v. Powell*, 428 U.S. 465, 477 n. 10 (1976), again set forth the standard to be applied in determining whether an error of law may be raised in a Section 2255 proceeding.

The writ of habeas corpus and its federal counterpart 28 U.S.C. § 2255, "will not be allowed to do service for an appeal." *Sunal v. Large*, 332 U.S. 174, 178 (1947). For this reason, nonconstitutional claims that could have been raised on appeal, but were not, may not be asserted in collateral proceedings. *Id.*, at 178-179; *Davis v. United States*, 417 U.S. 333, 345-346 and n. 15 (1974). Even those nonconstitutional claims that could not have been asserted on direct appeal can be raised on collateral review only if the alleged error constituted "a fundamental defect which inherently results in a complete miscarriage of justice," *id.*, at 346, quoting *Hill v. United States*, 368 U.S. 424, 428, (1962).

555 F.2d at 1130. It then ruled that unlike the "automatic" rule that applies on direct review, when proceeding by a § 2255 motion a defendant must show actual prejudice. *Id.* Edwards, of course, has not come close to meeting this exacting standard. Edwards was neither

prejudiced by his return to state custody, nor was the integrity of the fact finding process affected by his transfer. He entered a plea of guilty, and was sentenced on that plea. Now, belatedly asserting a claim of procedural error, he is neither protesting his innocence, nor claiming any deprivation of due process in determining his guilt, and he does not and cannot allege any actual prejudice. Indeed, in this respect his claims are far weaker than those found insufficient in *Del Vecchio* and *Alfano*. Surely, without more, a claim such as this does not merit review under 28 U.S.C. § 2255.*

POINT IV

Edwards' Plea of Guilty Waived Whatever Rights He Otherwise Might Have Had Under the Agreement.

The law is clear that "a plea of guilty to an indictment is an admission of guilt and a waiver of all non-jurisdictional defects." *United States v. Spada, supra*, 331 F.2d at 996. See generally *Weisser v. Ciccone*, 532

* This Court's decision in *United States v. Cyphers*, Dkt. No. 76-1131, slip. op. 1737 (2d Cir., February 8, 1977), does not require a different result. In *Cyphers*, a divided Court held that a claim under Article IV(e) of the Agreement could be raised, for the first time, on direct appeal of a conviction. While the Government continues to believe that the *Cyphers* decision (in which the Solicitor General has determined to seek *certiorari* and will shortly file a petition in the Supreme Court) is wholly inconsistent with *Davis v. United States*, 411 U.S. 233 (1973), it is nevertheless distinguishable, since the question of whether relief could be obtained under 28 U.S.C. § 2255 was neither posed nor considered. By way of analogy, in *United States v. Journet*, 544 F.2d 633 (2d Cir. 1976), this Court held that any violation of F.R. Crim. P. 11 rendered a guilty plea vulnerable to attack on direct appeal, even though the defendant never raised the issue in the District Court. In contrast as we have discussed, similar claims were found insufficient on collateral attack in *Del Vecchio v. United States, supra*.

F.2d 101, 104 (8th Cir. 1976); *Traber v. United States*, 466 F.2d 483 (5th Cir.) (Per Curiam), *cert. denied*, 409 U.S. 1044 (1972); *Rice v. Beto*, 420 F.2d 863, 865 (5th Cir. 1969), *cert. denied*, 398 U.S. 910 (1970); *United States v. Donohoe*, 458 F.2d 237, 239, n. 3 (10th Cir.), *cert. denied*, 409 U.S. 865 (1972); *LaFever v. United States*, 257 F.2d 271, 272 (7th Cir. 1958); *Simmons v. United States*, 354 F. Supp. 1383, 1388-89 (N.D.N.Y. 1973). It is equally clear that jurisdictional defects, that is, defects in the Court's subject matter jurisdiction, 8 Moore's Federal Practice ¶ 11.02[2][a] (Cipes ed.), cannot be waived.

In *United States v. Ford*, *supra*, this Court considered whether a claimed right to a dismissal of an indictment on the basis of an alleged return to state custody in violation of Article IV(e) was waivable. In holding that the claim was waived Judge Mansfield explained.

"This provision, however, which is intended to avoid the disruptions in a prisoner's rehabilitation occasioned by repeated transfers between jurisdictions, is thus for his benefit and is waivable."

550 F.2d at 742. Had the defect alleged in *Ford* been jurisdictional "in the broad sense of the court's power to adjudicate," *United States v. Loschiavo*, *supra*, 531 F.2d at 662-63 it could not have been waived, and there would have been no need for the Court to go on to consider the additional claims made under Article IV(c) of the Agreement. *Ford*, therefore, clearly demonstrates that a violation of Article IV(e) does not deprive the Court of subject matter jurisdiction.*

*Edwards characterizes his challenge as relating to the District Court's personal jurisdiction over him after he returned to

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The remaining question here too, then, is whether there was another kind of defect based on the Agreement so serious as to require vacation of a guilty plea, long after it was made. Judge Metzner concluded that there was not; in this he was clearly correct.

In particular, Edwards' argument that his failure to fully understand the application of the Agreement to his case undercut the voluntariness of his plea is simply not correct. The rule that a plea must be intelligently made to be valid does not mean that a plea is vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. When the defendant waives his remedies and admits his guilt, he assumes the risk of ordinary error in either his or his attorney's assessment of the law and facts. *Brady v. United States*, 397 U.S. 742, 757 (1970); *McMann v. Richardson*, 397 U.S. 759, 774 (1970); *Parker v. North Carolina*, 397 U.S. 790 (1970);* see also *Santana v. United States*, 477 F.2d 721 (2d Cir. 1973).

Riker's Island on December 18, 1974. But as noted, p. 14 *supra* at *, his claim is not only incorrect as a matter of law, but is precisely the species of claim that has been held to be waived by the entry of a guilty plea. *Bistram v. United States*, *supra*; *United States v. Rosenberg*, *supra*.

* *Parker v. North Carolina* directly controls this case. There, a defendant attempted to demonstrate after his plea of guilty that the grand jury that indicted him had been unconstitutionally composed. Although, had he been correct, the indictment would have been a nullity, the Supreme Court held that his plea of guilty barred any subsequent challenge to the validity of the indictment. 397 U.S. at 798-99. This holding was reaffirmed and extended in *Tollett v. Henderson*, 411 U.S. 258 (1973), in which the Court held that a guilty plea barred an attack on grand jury composition even where the unconstitutional composition of the grand jury was conceded, *id.* at 259, and where the defendant was never aware of either those facts or his rights and thus could not make a "knowing and intelligent waiver." *Id.* at 266-67.

Edwards should have asserted his claim under the Agreement during the period prior to the date of his guilty plea. Having failed to raise an issue which this Court has determined to be waivable, he is bound by that waiver.

POINT V

***United States v. Mauro* Does Not Compel Dismissal of the Indictment in This Case.**

Even assuming the continued vitality of *Mauro* and its retroactive application to a case involving collateral attack of a guilty plea, the Agreement does not require the dismissal of the indictment in this case. Edwards alleges that he was taken to federal court in Foley Square from Riker's Island pursuant to a writ on three occasions—for arraignment, plea and sentence.* In each case he was promptly returned to Riker's Island. This case, therefore, falls squarely within the exception to *Mauro* noted by *United States v. Chico*, Dkt. No. 77-1016, slip op. 4275 (2d Cir., June 20, 1977) which applies in cases where "a prisoner is removed from the prison of a state for a few hours to be arraigned, plead and be sentenced in the federal court without ever being held at any place of imprisonment other than that of the sending state and without interruption of his rehabilitation there." Slip op. at 4280. In addition, it appears from the record that on the two occasions that Edwards alleges he was returned to Riker's Island prior to the imposition of sentence on the federal charge (December 18, 1974 and January 8, 1975) he was being held there awaiting trial and was not "serving a term of imprisonment." It is only when the de-

* Though Edwards does not make the allegation, the record of the District Court proceedings in 74 Cr. 592 discloses that Edwards was also brought from Riker's Island on December 23,

[Footnote continued on following page]

fendant against whom a detainer is lodged is serving such a sentence that Article IV of the Agreement is triggered, and only under those circumstances that he is entitled to the benefit of its provisions. *United States v. Roberts*, 548 F.2d 665, 670 (6th Cir. 1977).

A. Edwards' Brief Appearances in Federal Court for Arraignment, Plea and Sentence, While an Inmate At Riker's Island, Are Not Substantial Enough to Invoke the Terms of the Agreement

In *United States v. Chico*, Dkt. No. 77-1016, slip. op. 4275 (2d Cir., June 20, 1977), this Court held that Article IV(e) of the Agreement does not apply in cases where a prisoner is removed from a state institution and returned after a few hours, without being held at any other place of imprisonment.

At the time the defendants in *Chico* were indicted in the District of Connecticut, they were confined in Connecticut state prisons as a result of felony convictions. On three separate occasions, they were brought to federal court pursuant to a writ—for arraignment, for entry of a plea of guilty, and for sentence. After each court appearance they were returned to the same state prisons from which they had been taken. Judge Mansfield, writing for a unanimous panel, concluded that the purposes of the Agreement would not be furthered by applying Article IV in that case because (1) the defendants were never imprisoned by the federal government; (2) their rehabilitation programs at the state penal institution were not interrupted by any other imprisonment; and

1974, for the purpose of conferring with his attorney. This additional trip, presumably made at the request of either Edwards or his attorney, does not alter the *de minimus* nature of Edwards' periods of federal custody or affect the application of *Chico* to this case.

(3) the speedy trial objectives of the Agreement were satisfied since the defendants entered guilty pleas within 120 days following their removal to face the federal charges. Slip op. at 4279-80.

Similarly, in this case, Article IV(e) of the Agreement does not apply. Edwards was confined at Riker's Island throughout the pendency of the federal charges against him;* any rehabilitation program available to Edwards at Riker's Island was not interrupted by a period of federal imprisonment; Edwards' pleaded guilty within three weeks of first being brought to federal court to answer the federal charge. This case is thus in all material respects identical to *Chico*. The decision of the District Court should thus be affirmed on the authority of that recent decision.

* Edwards' brief in this Court states (p. 2) that "Appellant remained in custody of the State of New York and on *December 15, 1974* [sic] was brought to the United States District Court for the Southern District of New York by a writ of habeas corpus ad prosequendum for the setting of bail, and returned to the State's custody at Riker's Island the same day." (Emphasis in the original). The record is less precise as to whether Edwards was returned to Riker's Island on January 8, 1975, after entry of his guilty plea. His brief in this Court merely states "On *January 8, 1975*, the Appellant was once again produced at the United States Courthouse Foley Square by writ of habeas corpus for plea and arraignment from the State's custody and again returned to the custody of the State of New York at Riker's Island." (Emphasis in the original). This language of course suggests that Edwards was both produced and returned on January 8. In any event, the sanctions of Article IV(e) only apply if "trial is not had on any indictment... prior to the prisoner's being returned to the original place of imprisonment." Since a plea of guilty is the equivalent of a conviction after trial, a return of Edwards to the custody of New York State after entry of a guilty plea neither violates Article IV(e) nor requires imposition of its sanctions.

B. Edwards Was Not "Serving a Term of Imprisonment" At the Time He Was Returned to State Custody and Is Therefore Not Entitled to the Benefits Conferred by Article IV of the Agreement

It appears from the record that on December 18, 1974, when Edwards was returned to Riker's Island after his arraignment and the setting of bail, he was not serving a term of imprisonment, but was being detained at Riker's Island pending disposition of state charges against him. It was not until February 13, 1975, after the entry of his guilty plea on the federal charge, that Edwards was sentenced in state court and began serving a term of imprisonment. It was, therefore, only at that time, if at all, that the provisions of Article IV(e) of the Agreement become applicable to him. Since it cannot be disputed that there was no violation of Article IV(e) by the Government at any time *after* February 13, Edwards' claim under that Article must be rejected.*

This issue was recently decided by the Sixth Circuit in *United States v. Roberts*, 548 F.2d 665 (6th Cir. 1977). In that case, the defendant was being held at the Queens

* The record is not entirely clear on the question of whether Edwards was serving a term of imprisonment at Riker's Island prior to February 13, 1975. The entry in the district court docket sheet quoted in appellant's brief, as well as the state practice of lodging prisoners at Riker's Island who are awaiting disposition of their cases, suggest that he was not serving a prison sentence prior to February 13. This conclusion is bolstered by the fact that the federal indictment charged Edwards with committing the bank robbery on or about May 30, 1974 and Edwards' brief in this Court states that he was not arrested by the state authorities until June 28, 1974. Finally, it is of course incumbent upon Edwards to come forward with facts sufficient to establish his right to the protection afforded by the Agreement. *United States v. Culotta*, 413 F.2d 1343, 1345 (2d Cir.), *cert. denied*, 396 U.S. 1019 (1969). Having failed to do so, his petition was insufficient and was properly denied.

House of Detention on a pending New York state charge at the time he was brought to the Western District of Michigan for arraignment⁺; the federal charge. He was returned to his original place of confinement without being tried on the federal charge. The Court concluded that the purpose of the Agreement would not be furthered by applying it in the circumstances of that case even though (1) the defendant was given credit for time served against the state sentence that was eventually imposed; and (2) he was actually engaged in a program of rehabilitation at the detention center. In reaching this result, the Court relied on the fact that any rehabilitation program would, of necessity, be dropped at the time the defendant was transferred to a permanent facility. 548 F.2d at 670.

This interpretation is also compelled by the language of Article III of the Agreement, which permits a defendant who "has entered upon a term of imprisonment" and against whom a detainer has been lodged to demand a trial within 180 days. A construction of the Agreement that applied this provision to a defendant who was merely awaiting trial in the sending jurisdiction might disrupt a planned trial or other pretrial proceedings in that jurisdiction.*

Moreover, as noted by the *Roberts* court, "the Uniform Criminal Extradition Act, which was adopted by many jurisdictions prior to promulgation of the Interstate Agreement on Detainers, contains express provisions for transfer for the purpose of criminal proceedings in another state of persons imprisoned while awaiting trial.

* Both Article III and Article IV contain the same phrase, "term of imprisonment," to describe the status of defendants to whom they apply. It is, therefore, appropriate to look to Article III for guidance in interpreting the provisions of Article IV.

See Uniform Criminal Extradition Act §§ 5 and 18." 548 F.2d at 671.

For these reasons, this Court should follow the decision of the Sixth Circuit and conclude that the Agreement does not apply to defendants who, like Edwards, were merely awaiting trial in the sending state.

CONCLUSION

The order of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

—vs.—

EUGENE QUEEN	8/ 1/74
DAVID RAGLAND	8/ 1/75
HAROLD EDWARDS	2/20/75

Docket Entries

- | <i>Date</i> | <i>Proceedings</i> |
|-------------|---|
| 6-11-74 | Filed indictment. |
| 6-13-74 | Deft. Queen: Produced on a Writ (Atty Present) pleads N/G. 10 days for motions. Bail con't as previously fixed by the Magistrate at \$50,000 cash. Deft. remanded in Lieu of bail. Writ satisfied.
Deft. Ragland: Produced on Writ (no atty). Court directs a N/G plea be entered. 10 days for motions. Bail con't as previously fixed by the Magistrate at \$50,000 cash. Deft. remanded in Lieu of bail. Writ satisfied. Knapp, J. Assigned to Judge Metzner for all purposes. |
| 6-24-74 | EDWARDS—Deft. not present (no atty.) Court directs a plea of Not Guilty to be and Bench Warrant ordered. Referred to METZNER, J.—KNAPP, J. |
| 6-24-74 | Bench Warrant Issued |
| 6-28-74 | Suppression hearing held as to defendants QUEEN and RAGLAND. Motion to suppress denied. |

*Docket Entries**Date**Proceedings*

QUEEN and RAGLAND—defts' present with their Attorneys. Both defts' withdraw their plea of not guilty and both plead guilty to count 1. Plea accepted. P.S.I. ordered. Sentence August 1, 1974. Bail conditions as set by the Magistrate are continued. Defendant's remanded in lieu of bail.—Metzner, J.

- Aug. 1-74—EUGENE QUEEN—Filed Judgment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on count ONE (1). Count 2 is dismissed on motion of defendants' counsel with the consent of the Government.—Metzner, J. copies issued.
- Aug. 1-74—DAVID RAGLAND—Filed judgment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SEVEN (7) YEARS on count (1) ONE. Count 2 is dismissed on motion of defendant's counsel with the consent of the Government.—Metzner, J. copies issued.
- Aug. 7-74—EUGENE QUEEN—Filed C.J.A. copy #2 —original copy appointing Allen Stim, Esqs. as Attorney, mailed to A.O., Wash., D.C. for payment.
- Aug. 15-73—QUEEN—Filed letter of deft. with memo endorsed: The attached letter will be treated as a motion to reduce sentence. The motion is denied since the Court is of the opinion

*Docket Entries**Date**Proceedings*

that the earliest date for consideration of parole should not occur until the defendant has served 1/3 of the sentence. The crime involved was robbery of a bank in which a gun was used. So ordered.—Metzner, J. m/n by pro se clerk.
England

- 8- -74—Filed Transcript of record of proceedings, acted for Def. 8-1-74
- 8-14-74—QUEEN—Filed Remand with Marshal's return 6/13/74
- 8-14-74—RAGLAND—Filed Remand with Marshal's return 6/13/74
- 9-16-74—QUEEN—Filed commitment & entered, Deft delivered to
- 10- 2-74—RAGLAND—Filed the following documents received from Mag. Raby, Docket Entry Sheet; Criminal complaint; disposition sheet appointments of counsel; temporary commitment
- 10-28-74—EDWARD, HAROLD—Closed Statistically because deft. is a Fugitive
- 11-12-73—HAROLD EDWARDS—Filed Affidavit for Habeas Corpus Ad Prosequendum
- 12-18-74—The defendant HAROLD EDWARDS with his atty. and the AUSA present. The defendant being produced on a writ of H/C. This matter is adjourned to 1/8/75 at 4:30 P.M. Writ adjourned to 1/8/75. Application to vacate bench warrant granted—METZNER, J.

Docket Entries

<i>Date</i>	<i>Proceedings</i>
12-18-74	Filed Notice of Readiness for trial
12-20-74	EDWARDS—Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum
Dec. 27-74	Filed writ of habeas corpus to produce deft. HAROLD EDWARDS from Rikers Island on Dec. 23, 1974 to this courthouse. Clerk—Carter, J.
Dec. 27-74	Filed writ of habeas corpus to produce deft. HAROLD EDWARDS from Rikers Island on Dec. 18, 1974 to this courthouse. Writ adj. to Jan. 8, 1975. Metzner, J.
01-08-75	HAROLD EDWARDS—(atty. present)—deft. produced on a w/h/c (AUSA present) withdraws plea of not guilty and pleads GUILTY to count 1. Plea accepted. P.S.R. ordered. Sentence adj. to Feb. 20, 1975. Writ Adj. to Feb. 20, 1975, Metzner, J.
01-14-75	Filed the following papers received from Mag. Raby's office: docket entry sheet, criminal complaint, indictment warrant, SDNY, disposition sheet and appointment of counsel.
02-20-75	HAROLD EDWARDS—Filed JUDGMENT (atty. Edward Panzer, present)—the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of TEN (10) YEARS on count 1. It is recommended that the Atty. General pursuant to Section 4082 of Title 18, USC, arrange to have this sentence served concurrently with the sen-

*Docket Entries**Date**Proceedings*

tence the deft. is presently serving which sentence was imposed on Feb. 13, 1975, in the New York State Criminal Court, in so far as the time that can be served concurrently can be served. If the Atty. General agrees with this recommendation the balance of this sentence if any, will be served in a Federal Institution to be designated by him. Count TWO (2) is dismissed on motion of the defts. counsel with writ satisfied. Metzner, J. (copies issued)

03-11-75—HAROLD EDWARDS—Filed CJA copy #2 appointing Edward Panzer of 299 Bdwy. as defts. atty. original mailed to AO, Washington, DC.

3-75—H. Edward—Filed commitment & entered return, Deft. delivered copy to Warden of Clinton Correc. Facility at Dannemora, N.Y.

04-03-75—Filed govts. w/h/c as to deft. HAROLD EDWARDS to have him appear on Jan. 8, 1975. Writ satisfied on 2/20/75. Metzner, J.

05-19-75—QUEEN—Filed the following papers recd. from Mag. Raby's Office: docket entry sheet, criminal complaint, SDNY, disposition sheet, appointment of counsel and temporary commitment.